

## REMARKS

At the outset, Applicants and the undersigned express their gratitude to Examiner Lau for the courtesies extended at the telephonic interview on February 13, 2003.

### Status of Claims

Claims 1-5, 9-11, 14-16, 18, 19, and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,513,519 to Cauger et al. ("Cauger") in view of U.S. Patent No. 5,717,609 to Packa et al. ("Packa"). Claims 6-8, 12, 13, 17, and 20 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants have herein added new claims 22-28 and have amended claims 1, 10, 15, and 21. Applicants submit that no new matter has been added. Applicants traverse the rejections as follows.

### Rejected Claims

Applicants submit that neither Cauger nor Packa, alone or in combination, teach or suggest all elements of independent claims 1, 10, 15, and 21. For example, Applicants submit that neither Cauger nor Packa, alone or in combination, teach or suggest, among other things, calculating energy efficiency changes, "wherein the energy efficiency changes represent changes to an entire consumption pattern related to at least one physical structure, and wherein the energy efficiency changes include considerations of at least one of equipment, consumer behavior, and physical aspects of the physical structure and spaces within the physical structure" as claimed in claims 1, 10, 15, and 21.

Cauger discloses a method of measuring changes in the energy transfer efficiency of a thermal transfer system such as a boiler system. Specifically, Cauger discloses "measuring the

amount of fuel used by the energy transfer system to produce a predefined quantity of energy at the system output, making modifications, and then again measuring the amount of fuel used to produce the same quantity of energy at the system output...” See Cauger, col. 4, lines 57-62. Applicants submit that such a measurement of energy in to energy out is not calculation of energy efficiency changes that “represent changes to an entire consumption pattern related to at least one physical structure . . . [and] include considerations of at least one of equipment, consumer behavior, and physical aspects of the physical structure and spaces within the physical structure” as claimed in claims 1, 10, 15, and 21.

Likewise, Applicants submit that Packa does not teach or suggest, among other things, calculating energy efficiency changes. Instead, Packa discloses a system and method for energy measurement and verification with constant baseline reference.

Applicants further submit that neither Cauger nor Packa, either alone or combination, teach or suggest, among other things, “reporting . . . energy efficiency changes” as claimed in claims 1 and 21 and “an individual report generation module” as claimed in claims 10 and 15. The Office Action is silent as to where these items are taught or suggested in Cauger or Packa. Applicants thus submit that the Office has not explained the obviousness rejections with “reasonable specificity” and has procedurally failed to establish a *prima facie* case of obviousness. See MPEP § 2142. Also, because neither Cauger nor Packa, alone or in combination, teach or suggest all elements of claims 1, 10, 15, and 21, and because there is no suggestion or motivation to combine the references, Applicants submit that the Office has not established a *prima facie* case of obviousness. See MPEP § 2143.

Thus, Applicants submit that claim 1, and claims 2-9 which depend therefrom, claim 10, and claims 11-14 which depend therefrom, claim 15, and claims 16-20 which depend therefrom, and claim 21 are patentable over the prior art of record.


Objected-to Claims

Applicants have herein added new claims 22-28. New claim 22 corresponds to objected-to claim 6, intervening claim 5, and base claim 1. New claim 23 corresponds to objected-to claim 7, intervening claim 5, and base claim 1. New claim 24 corresponds to objected-to claim 8. New claim 25 corresponds to objected-to claim 12 and base claim 10. New claim 26 corresponds to objected-to claim 13. New claim 27 corresponds to objected-to claim 17 and base claim 15. New claim 28 corresponds to objected-to claim 20. Thus, Applicants submit that new claims 22-28 are allowable.

CONCLUSION

Applicants respectfully request a Notice of Allowance for the pending claims in the present application. If the Examiner is of the opinion that the present application is in condition for disposition other than allowance, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below in order that the Examiner's concerns may be expeditiously addressed.

Respectfully submitted,

  
\_\_\_\_\_  
Jonathan C. Parks  
Reg. No. 40,120

KIRKPATRICK & LOCKHART LLP  
Henry W. Oliver Building  
535 Smithfield Street  
Pittsburgh, PA 15222  
Tel. (412) 355-6288  
Fax (412) 355-6501